

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Application of Pacific Gas and Electric Company for Authority, Among Other Things, To Increase Revenue Requirements for Electric and Gas Service and to Increase Rates and Charges for Gas Service Effective on January 1, 2003. (U 39 M)

Application 02-11-017
(Filed November 8, 2002)

Investigation on the Commission's Own Motion into the Rates, Operations, Practices, Service and Facilities of Pacific Gas and Electric Company.

Investigation 03-01-012
(Filed January 16, 2003)

Application of Pacific Gas and Electric Company Pursuant to Resolution E-3770 for Reimbursement of Costs Associated with Delay in Implementation of PG&E's New Customer Information System Caused by the 2002 20/20 Customer Rebate Program. (U 39 E)

Application 02-09-005
(Filed September 6, 2002)

**ADMINISTRATIVE LAW JUDGES' RULING
SETTING ASIDE SUBMISSION AND
TAKING FURTHER EVIDENCE REGARDING
EXECUTIVE COMPENSATION AND BONUSES**

1. Setting Aside Submission and Taking Further Evidence

In late December 2003, Pacific Gas and Electric Company (PG&E) disclosed the granting of about \$83 million in "retention" bonuses to certain

senior executives. In early January 2004, PG&E authorized additional long-term incentive bonuses.¹

It is not clear whether or to what degree these bonus programs were disclosed in the record in PG&E's Test Year (TY) 2003 General Rate Case (GRC) proceeding. The record will benefit from PG&E's further elaboration on this topic.² Therefore, we set aside submission of the proceeding for the purpose of taking further evidence regarding the ratemaking and public policy issues raised by executive compensation and bonus programs. (Rule 77 of the Commission's Rules of Practice and Procedure.)

2. Report, Comments and Schedule

To provide this further evidence, PG&E should file and serve a report in this docket. The report should provide information on, and examine, the following issues:

¹ As recently reported: "PG&E said last month that it would review its retention bonuses for 17 senior managers...Then, in a flurry of after-hours regulatory filings Monday night, PG&E disclosed that, aside from the \$83 million in retention bonuses, some of the same managers are pocketing millions of dollars more in so-called incentive bonuses...long-term incentive bonuses that PG&E disclosed Monday." ("PG&E Bonuses Growing" by David Lazarus, San Francisco Chronicle, January 7, 2004.) On January 15, 2004, the Greenlining Institute filed a motion to take official notice of \$83 million in executive bonuses and reopen the Phase 1 record. On January 30, 2004, Greenlining filed a Notice of Withdrawal of the motion. In its Notice of Withdrawal, Greenlining asserts, without objection by PG&E, that the total value of the retention bonus program on the vesting date of December 31, 2003, was \$84.5 million.

² The matter was addressed by President Peevey and Commissioner Brown at the January 8, 2004 Commission meeting. Further information and clarification will assist the Commission on this issue.

1. Identify and summarize each compensation, bonus, or incentive program that was authorized and/or executed in, or for, 2001, 2002, 2003 and 2004 for PG&E's senior executives. To the extent already provided in an exhibit in this record, cite the exhibit number, and provide one copy for Administrative Law Judge (ALJ) Mattson.
2. Explain the specifics of the retention bonus program, including when it was established, the operation of the program, the performance targets, the performance results, whether or not the results met the targets, and anything else reasonably necessary to understand the program. Include a copy of each relevant letter sent to participants, or other materials related to the program. State the total amount paid or payable under the retention bonus program (e.g., \$83 million, \$84.5 million).
3. Explain whether or not the recently awarded retention bonuses and underlying related program are the same as, or different than, one or more executive bonuses or retention bonus program(s) approved by the United States Bankruptcy Court for the Northern District of California during 2001-2003. Identify and summarize each executive bonus or retention bonus program approved by the Bankruptcy Court, including the cost(s) of such program(s). If the recent retention bonuses are different than the program(s) approved by the Bankruptcy Court, explain the difference(s).
4. Explain whether or not the recently awarded retention bonuses are the same as, or different than, the long-term incentive bonuses reported in January 2004. If different than the long-term incentive bonuses in January 2004, explain the difference(s).
5. State whether the retention bonus, the long-term incentive bonus that was reported in January 2004, and any other bonus program or programs, were disclosed and made part of the record in PG&E's TY 2003 GRC, and if so, where. Provide one copy of each relevant exhibit or transcript page for ALJ Mattson. If these bonuses were not disclosed in the TY 2003 GRC record, explain why.
6. Explain the ratemaking and public policy implications of the retention bonuses, long-term incentive bonuses announced in January 2004, and any

other compensation, bonuses and bonus programs that are identified as a result of the report prepared pursuant to this Ruling.

7. Specifically for the retention bonus program, state whether it is PG&E's intention for the program to be funded by ratepayers or stockholders.
8. Specifically identify the source of funding for the approximately \$83 million to \$84.5 million retention bonus program. Explain how that relates to the source and use of funds authorized in the Modified Settlement Agreement authorized in Decision 03-12-035. If the source of funds is "headroom," the funds to be acquired through the "regulatory asset," or another source, state the source and explain the extent to which this is or is not derived from ratepayers. If it is PG&E's intention to have the retention bonuses funded by stockholders rather than ratepayers, describe and explain what mechanisms, if any, PG&E has used, or will use, to ensure the retention bonuses, if any, have been or will be paid by stockholders (e.g., from money that would otherwise be paid in dividends), and how this can be measured and monitored by the Commission.
9. PG&E has been reported in the press as having said that it is obligated to pay the approximately \$83 million to \$84.5 million in retention bonuses, even to executives who are no longer with the company.³ Is it PG&E's current position that PG&E is still obligated to pay these bonuses? Please provide the analysis used by PG&E to reach PG&E's current position.
10. In the case of senior executives of PG&E Corporation, National Energy Group (NEG), or National Energy and Gas Transmission, Inc. (NEGT), to what extent, if any, is their compensation paid by funds derived from the ratepayers of PG&E (the utility)? To the extent NEG/NEGT is in bankruptcy, how will PG&E Corporation and NEG/NEGT assure that funds derived from PG&E ratepayers will not be used to fund the

³ " 'The conclusion of the review was that we had an obligation and that the obligation had to be met,' he said [Brian Hertzog, a spokesman for PG&E Corp]. " ("PG&E Bonuses Growing" by David Lazarus, San Francisco Chronicle, January 7, 2004.)

retention bonuses or other compensation for NEG/NEGT senior executives?

11. State anything else reasonably necessary for the Commission to understand executive compensation and bonus programs from 2001 through 2004 for PG&E's senior executives, the amounts of the compensation and bonuses paid, the amounts funded by ratepayers and shareholders, and the ratemaking and public policy implications of these programs.

When filed, PG&E's report should be made part of the record. As a result, the report should be verified. (Rule 2.4.) Parties may file and serve comments and reply comments, which should also be made part of the record. These pleadings should similarly be verified.

Any part of the report, comments, or reply comments that a party is unwilling or unable to verify should be filed and served in a separate document. The documents and pleadings, including motions for hearing and separate motions to strike, if any, should be filed and served according to the schedule adopted below.

Motions for hearing, if any, must state (1) the disputed issue of material fact or opinion, (2) citation to the fact or opinion (*e.g.*, in the report, comment, reply comment), (3) justification for hearing (*e.g.*, why the disputed fact or opinion is material), (4) what the moving party would seek to demonstrate through the hearing, (5) the evidence the party would seek to introduce at the hearing, (6) a proposed schedule, and (7) anything else necessary for the purpose of making an informed ruling on the motion. A response to any such motion may be filed and served. A response must be filed and served by the date shown in the adopted schedule.

IT IS RULED that the submission date of October 8, 2003 is set aside in order to take further evidence on the issues set forth in this Ruling. Pacific Gas and Electric Company (PG&E) shall file and serve a verified report by the date in

the adopted schedule. The report shall provide the information and address the issues identified in this Ruling. Parties may file and serve verified comments, verified reply comments, motions for evidentiary hearing, separate motions to strike, and responses to motions. Each document shall be filed and served according to the adopted schedule. Any part of any report, comment or reply comment that a party is unwilling or unable to verify shall be filed and served in a separate document. Absent the granting of a motion to strike, the report, comments, and reply comments shall become part of this record. Absent the filing of a motion for evidentiary hearing, the matter is resubmitted as noted in the adopted schedule. The adopted schedule is:

Date	Item
February 10, 2004	PG&E files and serves verified report
February 18, 2004	Parties file and serve verified comments
February 20, 2004	Parties file and serve verified reply comments
February 24, 2004	Parties file and serve motions for evidentiary hearing; Parties file and serve motions to strike
February 24, 2004	Resubmission date if no motions for hearing are filed
February 26, 2004	Parties file and serve responses to motions

Dated February 3, 2004, at San Francisco, California.

/s/ JULIE M. HALLIGAN /BWM

Julie M. Halligan
Administrative Law Judge

/s/ BURTON W. MATTSON

Burton W. Mattson
Administrative Law Judge

CERTIFICATE OF SERVICE

I certify that I have by mail, and by electronic mail to the parties to which an electronic mail address has been provided, this day served a true copy of the original attached Administrative Law Judges' Ruling Setting Aside Submission and Taking Further Evidence Regarding Executive Compensation and Bonuses on all parties of record in this proceeding or their attorneys of record.

Dated February 3, 2004, at San Francisco, California.

/s/ FANNIE SID

Fannie Sid

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to insure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.